

IMPLEMENTATION IN DELAWARE OF THE AMERICAN RECOVERY AND REINVESTMENT ACT

Fourth Interim Report

November 3, 2010

INTRODUCTION

Dear Governor Markell:

The American Recovery and Reinvestment Act was signed into law on February 17, 2009. On March 13, 2009, you issued Executive Order No. 3, which in part named me as the chair of Delaware's Stimulus Solutions Group through the end of calendar year 2010. As part of that responsibility, I have issued interim reports to you on the status of ARRA implementation in Delaware.

In asking me to coordinate implementation of ARRA in Delaware, you asked me to focus on two primary goals and a number of related goals. The two primary goals were (a) to ensure that Delaware sought all ARRA funds that it could responsibly seek, in order to help provide jobs and services to Delawareans, and (b) to ensure that Delaware responsibly monitored and tracked ARRA funds that were received.

The deadlines for applying for most ARRA funds have now expired, and most state agencies were aggressive in applying for competitive funds for which they might be eligible. As would be expected, there have been some extraordinary successes -- most notably the state's receipt of a Race to the Top grant of over \$100 million -- and some disappointments.

With respect to monitoring and tracking of ARRA funds, a challenge with which all states have struggled, Delaware continues to have one of the most intensive monitoring programs of any state in the country. Our individualized review of every state purchase order involving ARRA funds has successfully flagged a number of questionable expenditures, and likely deterred an even larger number from being submitted. The area of ARRA funding that has been more difficult for us to monitor is the set of programs where ARRA funds are, by law, turned over to third parties for expenditure, making it impossible for the state to review individual purchase orders or otherwise exercise daily supervision. The state has been diligent in monitoring ARRA spending, and we will continue to strive to ensure that funds are used responsibly and for the purpose that they were awarded.

GRANT APPLICATIONS

We instructed all cabinet agencies at the beginning of the ARRA process, and repeatedly throughout the period of time when grants were made available, that they should apply for all federal grants that they could responsibly manage. The Department of Education and the Governor succeeded in winning a Race to the Top grant of over \$100 million, easily the largest competitive ARRA grant awarded to the State of Delaware. The Department of State also obtained a competitive library grant of over \$1 million to enhance internet capabilities of Delaware libraries, and the Department of Labor successfully sought out a series of National Emergency Grants that have allowed it to provide services to unemployed workers.

We were also aggressive in encouraging private businesses, local governments, non-profits, and institutions of higher learning to apply for available ARRA funds and take advantage of ARRA-funded tax breaks. We did so through a series of formal presentations at gatherings of those groups, press releases, and video seminars made available on the state's web site. Although there is no way to empirically track the success of our efforts, there is anecdotal evidence that entities in each of these categories took advantage of ARRA funds. Most notably, a number of major capital projects have been initiated in Delaware using bonding opportunities created through ARRA, and the University of Delaware has received tens of millions of dollars in ARRA research funds for its academic programs.

The most significant disappointments for Delaware in the ARRA grant process were the federal government's decision to exclude the Mid-Atlantic rail region from eligibility for high-speed rail funds, and the federal government's decision not to award Delaware a supplemental highway grant for improvement of the State Route 1/Interstate 95 exchange. Delaware made a high-level effort to obtain the latter grant, including personal appeals from the Governor and Lieutenant Governor to the United States Secretary of Transportation. Ultimately, the high-speed rail zones were set by the federal government before applications for funding were even accepted, and the federal government did not award supplemental highway grants to any 'traditional' highway projects.

STATE USE OF FEDERAL FUNDS

As noted in prior reports, the state has two responsibilities with respect to ARRA funds that are often at odds. There is obviously an interest in quickly spending ARRA funds in order to allow them to help stimulate the economy. However, we take very seriously our responsibility to carefully screen the spending of ARRA funds and track and report on the spending of those funds. We have encouraged state agencies to side, when in doubt, on the side of caution with respect to expenditure of funds.

In order to ensure accuracy, this report only attempts to capture receipt and spending of federal funds that were awarded directly to the state for expenditure or transfer to third parties. The reason for this limitation is that there is no way to precisely report the receipt and expenditure of funds received by non-state agencies, other than through analysis of the same federal reporting forms that are available to the general public. Therefore, this report does not, and is not intended to, provide a full picture of the total amount of federal ARRA spending at work in Delaware.¹

An additional limitation of this report is that reporting on the portions of ARRA funds that state agencies have ‘expended’ gives an incomplete picture of how efficiently those agencies are spending ARRA funds. In some instances, particularly those where work is billed after it is performed, the ‘expended funds’ statistics understate the speed at which agencies are spending ARRA funds. In the case of DelDOT, for example, only \$58.9 million of its \$142 million in ARRA funds are reported as “expended,” even though all of DelDOT’s ARRA projects are either completed or underway and all are expected to be completed within federal deadlines. In other instances, the ‘expended funds’ statistics overstate the speed at which spending is occurring: in the case of State Energy Plan funds, the vast majority of the \$10,967,015 reported as “expended” simply reflects a transfer of funds from DNREC to the State Energy Utility. The funds remain unspent in any non-accounting sense.

With all of those caveats, Delaware’s accounting system is reporting approximately 38% of Delaware’s ARRA funds as “expended.” The following items are of note with respect to these figures:

- Delaware’s Race to the Top grant constitutes a full 18% of the total ARRA funding directly received by the state, and virtually none of the state’s Race to the Top funds had been spent as of September 30, 2010. That is consistent with the schedule for Race to the Top spending. Race to the Top funds represent 30% of all unexpended ARRA funds in Delaware.
- A substantial percentage of the remaining unexpended funds (25% of all unexpended funds) consist of funds allocated to local school districts that are drawn down on a monthly basis. Those funds are being spent at a rate that

¹ In order to ensure accuracy, this expenditure report also excludes ARRA funds that essentially supplemented the state’s operating budget, most significantly a federal enhancement in its share of Medicaid funding, but also including enhancements to food stamp and unemployment benefits.

will cause them to be fully expended by the end of the relevant grant periods. Thus, over 55% of unexpended ARRA funds in Delaware are federal education funds that were not expected to be expended at this time.

- An additional 21% of unexpended ARRA funds in Delaware are Department of Transportation funds for highway projects. As mentioned above, spending on DelDOT projects is occurring at the rate that was expected and projected at the very start of the ARRA process, and all ARRA funded projects began on time and have either ended or been initiated in a manner that will cause them to end within ARRA-imposed deadlines.
- Of the remaining unexpended funds, there are some areas of concern:
 - (a) Very little of the \$33.8 million received by the state for the Energy Block Grant and State Energy Program has been expended in any manner other than accounting transfers. In the last quarter, only 3.5 jobs were attributed to the Energy Block Grant and only 3.33 jobs to the State Energy Program. This is an area of concern that has been noted in my reports dating back to October of last year.
 - (b) The Delaware State Housing Authority received \$10 million in Neighborhood Stabilization Funds on February 11, 2010, which were to be used for financing assistance to low-income homeowners, and purchase/rehabilitation of abandoned and foreclosed properties. To date, none of these funds have been expended, due in part to changes in DSHA's intended uses of the funds. DSHA has indicated that it has recently signed a revised agreement with the U.S. Department of Housing and Urban Development for expenditure of these funds, and expects to move ahead promptly with this program. DSHA has responsibly implemented other facets of its ARRA funding program, and we are confident that it will place the Neighborhood Stabilization Fund into operation swiftly.

Other significant areas of unexpended funds are of less concern:

- (a) The state only recently received some of the unexpended grants, such as its library grant and School Improvement Grants.
- (b) The state's \$5 million grant for WIC technology improvements was not expected to be spent at this juncture of the ARRA process.
- (c) Other areas that might otherwise be cause for concern, such as the \$19 million Clean Water State Revolving Fund program (where all projects were required to be under contract by February, 2010, but 61% of funds remain unexpended) appear to be trending in the right direction. In the Clean Water State Revolving Fund program, for example, jobs attributable

to the program have grown from 27.6 in the first quarter of 2010 to 104.61 in the third quarter of 2010.

STATE OVERSIGHT OF ARRA SPENDING

The extraordinary sum of new federal funds coming into Delaware as a result of ARRA has presented a management challenge for the state, as the state has attempted to monitor hundreds of millions of new federal dollars with minimal increases in staff. We have employed a number of tools to ensure the maximum possible oversight of ARRA funds:

- (a) A procedure -- still the only one we are aware of in the country -- where each state purchase order using ARRA funds is reviewed by an Office of Management and Budget staff person specializing in ARRA funds, and if recommended by OMB, is also reviewed by the Lieutenant Governor's office.
- (b) Regular meetings during the height of ARRA spending between the Lieutenant Governor's office and cabinet-level officials of agencies receiving ARRA funds, and continued meetings and/or reports between agencies that continue to spend significant ARRA funds and the Lieutenant Governor's office.
- (c) Formal designation of the State Auditor as the agency responsible for monitoring local school district spending of ARRA funds, an area of significant spending where the state lacks legal authority and resources to do adequate monitoring.
- (d) Conscientious training and education of state agencies with respect to proper and timely reporting of ARRA expenditures.

In almost all instances, the procedures put in place to manage ARRA funds have resulted in positive outcomes. The purchase order review process and ongoing agency-by-agency review of ARRA spending has caused a number of questionable expenditures to be avoided, and state agencies have been timely and largely accurate in the filing of their ARRA spending information.

One notable area where the above procedures did not produce a positive outcome was in the state's weatherization assistance program. I have been in regular communication with federal Department of Energy officials regarding the state's weatherization program, federal officials believe that it will be restarted in a sufficiently timely manner to ensure that all ARRA funds are spent on schedule -- notwithstanding the additional delay that was created by the legislature's movement of the program within state government.

I continue to have the same concerns I have expressed since the outset of the ARRA process with some agencies' ability to thoroughly monitor funds for which the state serves primarily as a pass-through or awarding entity. This is purely an issue of resources: given unlimited resources, each state agency could exercise microscopic supervision of each third party's spending. But such resources do not exist, in this state or any state. We continue to use our best efforts to monitor these transferred funds, in some cases through the solicitation of assistance from the State Auditor, in some cases

through the imposition of extremely strict reporting requirements on third party recipients of ARRA funds (beyond those imposed by federal law). But this will be an area of concern throughout the life of ARRA funds.

JOBS

This report does not attempt to calculate the total number of Delaware jobs attributable to ARRA. As explained in past reports, the total number of jobs attributable to ARRA is a combination of jobs created through personal income tax cuts and other private sector incentives, jobs retained due to direct supplementation of the state budget, and jobs retained or created through direct federal spending. Of all these categories, only part of the last category is reported here: jobs reported by agencies that received ARRA funds through the State of Delaware (a figure that excludes, for example, jobs created through local government or university programs). Other entities have attempted to estimate the total Delaware jobs attributable to stimulus funding (the President Council of Economic Advisors estimated 9,000 jobs in its most recent report), but this report does not attempt to generate a total jobs number for the state.

The number of jobs retained or created solely through ARRA funding of recipient agencies through the State of Delaware peaked in the last quarter of 2009, and has declined somewhat since that time from 1,248 jobs to 994 jobs in the most recent quarter. By far the most significant declines in reported jobs since the last quarter of 2009 have been in local school district education jobs funded by ARRA. This drop reflects the drop in ARRA funds available to local districts during this time period. Even after this drop, 37% of all of the jobs funded through recipient agencies in Delaware with ARRA funds are still education jobs. Other significant reductions have occurred in the state's drinking water state revolving fund, resulting from the completion of a number of drinking water programs funded with that ARRA grant, and the state's weatherization program, reflecting the state's decision to put the program on hold until programmatic problems could be remedied. Again, these figures of 994 and 1,248 jobs do not represent the total number of jobs created or retained by ARRA funds in Delaware, but simply those jobs reported by recipients of ARRA funds received initially by state government.

The Lieutenant Governor's office also encouraged state agencies to aggressively advertise the availability of ARRA projects to women and minority owned businesses in Delaware. Although the state's processes for tracking the award of contracts to women and minority owned businesses are not conducive to determining the overall success of these efforts, DelDOT has separate reporting duties under federal law and its reporting suggests that its efforts in this area have yielded some success. The two largest DelDOT projects that have been substantively undertaken—the DTC Mid County Maintenance Facility and the I-95 Toll Plaza project – have both made significant investments in women and minority owned businesses. Over \$1 million in contracts from the maintenance facility project and over \$2 million in contracts from the toll plaza were awarded to subcontractors owned by women and minorities.